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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,402	12/09/2002	Christophe Dauga	012237-0290736	3625
909 7590 07/10/2008 PILLSBURY WINTHROP SHAW PITTMAN, LLP P.O. BOX 10500 MCLEAN, VA 22102				
EXAMINER				
SAADAT, CAMERON				
ART UNIT		PAPER NUMBER		
3714				
MAIL DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/069,402

**Applicant(s)**

DAUGA ET AL.

**Examiner**

CAMERON SAADAT

**Art Unit**

3714

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-20 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-20 and 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/6/2007 has been entered. Claims 3-20 and newly added claims 22-26 are pending in this application. Claims 1-2 and 21 are cancelled.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 22 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement and failing to reasonably provide enablement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The newly added negative limitation "without permanent changes to the integrity of said body" is not supported in the specification.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The antecedent basis for "said coloring agents" is not clearly set forth.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 3, 5-12, 15-19, and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Syrowicz et al. (US Patent Application Publication 2003/0060810 A1; hereinafter Syrowicz).**

Regarding claims 22-23, Syrowicz discloses a process for applying cosmetic products on at least part of a human body, comprising the steps of: taking an image of a human body part to be treated, analyzing local characteristics of the part from the image, and utilizing a processor 12 to control a robotic arm 28 for applying suitable cosmetic products over the part according to the local characteristics, wherein the robotic arm is controlled by at least one signal generated on the basis of the analysis of the local characteristics. *See ¶'s 7, 18, 29.* Syrowicz additionally discloses that the

cosmetic treatment may be delivered with a device which can pour a chemical substance to treat an undesired presence, such as pimples (see paragraph 29). Syrowicz does not explicitly disclose that the poured chemical is a coloring agent. However, the examiner takes official notice that it is old and well known to include a coloring agent in chemical substances for treating unwanted presences such as pimples, in order to match the color of a user's skin, such that topical treatment may be applied without being noticeable by others. Therefore, it would have been obvious to one of ordinary skill in the art to modify the chemical substance described in Syrowicz, by including a coloring agent, in order to match the color of a user's skin, such that topical treatment may be applied without being noticeable by others.

Regarding claim 3, Syrowicz discloses steps of defining particular areas of the body part and of applying products successively over the particular areas. *See* ¶18.

Regarding claim 5, Syrowicz discloses that the local characteristics are monitored immediately after the application of the cosmetic product. *See Fig. 3, S22-28.*

Regarding claim 6, Syrowicz discloses application of cosmetic product carried out by a head 20.

Regarding claim 7, Syrowicz discloses that a distance between the head and the body part is monitored in real time. *See* ¶ 26.

Regarding claim 8, Syrowicz discloses monitoring of local characteristics immediately after the application of the cosmetic product is carried out using the head. *See Fig. 3, S22-28.*

Regarding claim 9, Syrowicz discloses that the body part is reconstructed three-dimensionally in order to obtain a three-dimensional representation. *See* ¶ 16.

Regarding claim 10, Syrowicz discloses treatment product that are applied by a wipe impregnated with the product to be applied. *See* ¶ 29.

Regarding claim 11, Syrowicz discloses at least one digital image of the human body part. *See* ¶18.

Regarding claim 12, Syrowicz discloses that the digital image is digitized. *See* ¶ 18.

Regarding claim 15, Syrowicz discloses a means of positioning the body part, a means of taking images, a means of analyzing images in order to obtain the local characteristics of said part, and a means of applying makeup products over the part according to the local characteristics. *See* ¶'s 7, 18, 29.

Regarding claim 16, Syrowicz discloses that the application means is supported by a robotic arm 28 which is articulated in order to be capable of following the body part.

Regarding claim 17, Syrowicz discloses that the application means comprises at least one nozzle capable of spraying a treatment product, said head being of the piezoelectric. *See* ¶ 29.

Regarding claim 18, Syrowicz discloses means 26 for controlling the position of the application means 28 with respect to the part of the area to be treated

Regarding claim 19, Syrowicz discloses means for automatically controlling the total amount and the partial amounts of each product according to the visual characteristics desired. *See* ¶ 29.

Regarding claim 20, Syrowicz discloses a computer program comprising program code means to implement the steps of the cosmetic treatment, when the program runs on a computer 12. *See Figs. 2-3.*

Regarding claim 24, Syrowicz discloses treatment to the human skin. *See* paragraph 15.

Regarding claims 25-26 Syrowicz does not explicitly disclose a coloring agent that comprises physical forms of creams, oils, dyes, etc. However, the examiner takes official notice that these physical forms of cosmetic treatment are old and well known for topical treatment. Therefore, it would have been

obvious to one of ordinary skill in the art to modify the poured chemical substance described in Syrowicz, by providing these various physical forms in order to provide topical treatment.

**Claims 4, and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Syrowicz et al. (US Patent Application Publication 2003/0060810 A1; hereinafter Syrowicz) in view of Lehmann et al. (USPN 6,575,751; hereinafter Lehmann).**

Regarding claim 4, Syrowicz discloses all of the claimed subject matter with the exception of explicitly disclosing a step of storing the products used and the visual characteristics obtained. However, Lehmann teaches a cosmetic treatment system wherein product treatment information and patient information is stored so that a physician may access and analyze patient history data in order to prescribe proper treatment (Col. 25, lines 3-25; Col. 4, line 66 – Col. 5, line 13. Thus, in view of Lehmann, it would have been obvious to one of ordinary skill in the art to modify the storage device described in Syrowicz, by storing product and visual patient history information, in order allow a physician to access and analyze patient history data in order to prescribe proper treatment.

Regarding claims 13 and 14, Syrowicz discloses all of the claimed subject matter with the exception of explicitly disclosing that (as per claim 13) the image taking and application steps are carried out in a first zone, and the analysis step is carried out in a second zone distinct from the first zone; (as per claim 14); wherein the application step is carried out in a third zone distinct from the first and second zones; wherein the zones communicate via Internet. However, Lehmann teaches a cosmetic treatment system wherein the steps of capturing an image, analysis, and application step are carried out in remote locations via Internet (Col. 4, line 1 – Col. 6, line 40). Hence, in view of Lehmann, it would have been obvious to an artisan to modify the cosmetic treatment described in Syrowicz, by providing the steps of capturing an image, analyzing the image, and providing treatment at various remote locations, in order to

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allow a physician to access information regarding patient history data and treatment data and further collaborate with others regarding patient and treatment data, regardless of patient's physical location.

***Response to Arguments***

Applicant's arguments with respect to claims 3-20 and 22-26 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CAMERON SAADAT whose telephone number is (571)272-4443. The examiner can normally be reached on M-F 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cameron Saadat/  
Primary Examiner, Art Unit 3714  
7/7/2008